IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 14TH MARCH 2007 / 23RD PHALGUNA 1928

OP.No. 4487 of 2003(H)

PETITIONER:

HOLY MAGI FORANE CHURCH, MANIMALA,
REPRESENTED BY ITS TRUSTEE MR.BINU K.THOMAS

BY ADV. SRI.JOHN RAMESH K.I.JOHN

RESPONDENTS:
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1. THASILDAR, KANJIRAPPALLY.

2. THE REVENUE DIVISIONAL OFFICER, KOTTAYAM

3. GOVERNMENT OF KERALA,
REPRESENTED BY SECRETARY, TAXES DEPARTMENT,
THIRUVANANTHAPURAM

BY GOVERNMENT PLEADER SMT.R.BINDU

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 14/03/2007, THE COURT ON 14/03/2007 DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO.7987/2003 IN O.P. NO.4487/2003

DISMISSED:

14.3.2007 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF ORDER DT.20.2.81.

P2: TRUE COPY OF THE AFFIDAVIT OF CHANCELLOR OF THE ARCH DIOCESE OF CHANGANACHERRY DT.17.7.2002.

P3: TRUE COPY OF RETURN UNDER SUB-SECTION (1) OR (3) OF SECTION 7 OR 8 DT.NIL.

P4: TRUE COPY OF ORDER OF ASSESSMENT DT.29.6.2002.

P5: TRUE COPY OF FORM OF APPEAL AND GROUNDS OF APPEAL DT.21.9.2002.

P6: TRUE COPY OF RECEIPT OF AN AMOUNT RS.35,170/- DT.2.9.2002 ISSUED FROM THE VILLAGE OFFICE.

P6A: TRUE COPY OF THE LETTER DT.28.11.2002.

P7: TRUE COPY OF ORDER DT.3.1.2003.

TRUE COPY

P.S. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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O.P. No.4487 of 2003

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Dated this the 14th day of March, 2007.

JUDGMENT

The petitioner is claiming exemption from building tax in respectof a building constructed by it. According to the petitioner, the petitioner filed return claiming exemption from building tax in respect of the building. The application produced does not contain the description of the building or the use of the building. All what is stated is that petitioner is a charitable institution which itself is misleading because petitioner is a religious institution. The question to be considered is not about the ownership of building, but the nature and use of the building. If building is used for religious or charitable purpose, it is entitled to exemption. However, if building is let out for functions like marriage, meetings etc., then tax is payable irrespective of whether building is owned by a charitable or religious institution. This position is settled by various decisions of this court. Even though counter affidavit is filed, respondents have also not stated the nature and use of the building which is the only basis on which exemption is to be considered under Section 3(1)(b) of the Building Tax Act. In the circumstances, O.P. is disposed of directing the first respondent

to inspect the building and satisfy himself about the nature and use of the building. If the building is used as a parish hall as claimed by the petitioner, then it is entitled to exemption as the use is religious purpose. On the other hand if the building is let out to parishioners for the purpose of marriage or any other function, it is to be taxed irrespective of whether it is owned by charitable or religious organisation. The first respondent is directed to pass orders after conducting inspection of the building within one month from the date of production of copy of this judgment. The petitioner will produce copy of this judgment and allow the first respondent to inspect the building and produce documents pertaining to the nature and use of the building.

C.N.RAMACHANDRAN NAIR
Judge

pms